



State of New Hampshire
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

<u>Tilton Police Union, NEPBA Local 29</u>	*	
	*	
Petitioner	*	
and	*	Case No: P-0791
	*	
Town of Tilton	*	
	*	
Respondent	*	Decision No. 2007-100

APPEARANCES

Representing Tilton Police Union, NEPBA Local 29

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Representing Town of Tilton

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BACKGROUND

The Tilton Police Union, NEPBA Local 29 ("NEPBA") filed a certification petition on February 20, 2007. NEPBA seeks to certify a unit composed of 18 positions, consisting of Dispatcher (1), Dispatcher-Clerk (1), Patrolman (4), Patrolman School Resource Officer (1), Part-time Patrolman (3), Detective (2), Part-time Detective (1), Detective Sergeant (1), Corporal (1), Sergeant-Police Prosecutor (1), and Sergeant (2).

On March 6, 2007 the Town of Tilton filed exceptions. The Town asserts that sergeants are supervisory employees within the meaning of RSA 273-A:8, II and should be excluded, that a clerical employee also serves as a confidential secretary to the Chief of Police and should be excluded pursuant to RSA 273-A:1, IX (c), and that "Detective," "Police Prosecutor," and "School Resource Officer" are not job titles but are particular duty assignments and should be recognized as such in these certification proceedings.

The undersigned hearing officer conducted a hearing on the petition on April 11, 2007 at which time the parties presented testimony and submitted exhibits. The Town submitted a memorandum on April 11, 2007 and the record was held open until May 11, 2007 to allow the NEPBA to submit a post-hearing brief. The Town also filed a supplemental brief on May 11, 2007.

FINDINGS OF FACT

1. The Town of Tilton is a public employer within the meaning of RSA 273-A:1, X.
2. The proposed members of the bargaining unit are employees within the meaning of RSA 273-A:1, IX.
3. The Police Department Policy Manual contains an organizational chart for the Town's Police Department. Union Exhibit One, §103-3. "Detective," "Prosecutor," and "School Resource Officer" are listed horizontally in the third tier of the chart along with Dispatcher, Clerk, and Patrol Sergeant. They also appear in the listing of job descriptions in §104 of the Department Policy Manual, Union Exhibit One.
4. When acting as the department's Detective, Prosecutor or School Resource Officer ("SRO") an officer engages in specific activities summarized in the "Job Descriptions" portion of the Department Policy Manual. Union Exhibit One at §104, pp 9-14. The execution of the responsibilities of Detective, Prosecutor or SRO is a full time undertaking with exceptions such as SRO assignment to the 7 a.m. to 3 p.m. shift during school vacations and summer recess and the limited instances where the involved officers are assigned to other tasks or duties.
5. The tasks performed by a Detective, Prosecutor, or SRO are "in addition to the duties of the rank of that individual..." Union Exhibit One at § 104, pp. 9-11. However, the reality is that officers acting as Detectives, Prosecutors and School Resource Officers perform the responsibilities of those jobs to the exclusion of the responsibilities listed under the job descriptions provided for sergeants, corporals and patrol officer. This circumstance is specifically contemplated by and consistent with the Department Manual where the written list of duties for sergeant, corporal, and patrol officer appears, as each written list is prefaced by the qualifier that "any one position may not include all of the duties listed..."
6. The Department Manual states that a captain "performs highly responsible administrative and supervisory work in planning, organizing and directing the activities of the police department." A captain also "performs work of substantial importance to the operation of the department." Under supervision exercised, the Department Manual states that a captain's "supervision is exercised directly through the Chief of Police over the entire subordinate staff of the entire department; evaluates, and recommends selection, performance and discipline and dismissal of assigned personnel." Union Exhibit One at § 104, p. 3.

7. The Department Manual states that a sergeant "performs responsible administrative and technical supervisory work in commanding departmental police personnel. Performs all patrol and investigative procedures performed by police officers." Under Supervision exercised, the Department Manual states that a sergeant "reviews and evaluates work being performed, performance and discipline of assigned personnel; evaluates and recommends selection of new employees to Captain." Union Exhibit One at § 104, p. 4.
8. Under the Department Manual, there are 4 levels of discipline, beginning with an oral reprimand, and progressing to more severe discipline consisting of a written reprimand, a demotion or suspension without pay, and dismissal from the department. Sergeants dispense oral reprimands, but only the Chief is authorized under the Department Manual to impose the more severe forms of discipline. Before Sergeant Martin proceeded with the oral reprimands documented in Town Exhibits 1-3, he consulted with the Captain to ensure that the oral reprimands were appropriate.
9. There are a number of components to the hiring process, and sergeants are only involved in the Oral Board Interview. At times Patrol Officers also sit on the Oral Interview Board. Beyond the fact of their participation on the board, there was little information presented at the hearing about the sergeant's role or degree of influence in the hiring process via the Oral Board Interview process or otherwise. There was insufficient evidence that sergeants make a specific hiring or non-hiring recommendation or, for that matter, how any input on such matters provided by sergeants is treated.
10. Sergeants and corporals complete written performance evaluations. Town Exhibit 5. In particular, the evaluations completed by sergeants in mid-2006 were submitted in connection with the Town's determination of merit pay increases. However, the extent to which, if any, the Town relies upon and uses such evaluations during the merit pay increase process was not established at the hearing.
11. Apart from that which is noted in the previous Findings of Fact, neither sergeants nor corporals are granted authority to make recommendations about the status of officers in regards to matters such as entitlement to pay increases, promotion, demotion, hiring, or continued employment with the Department.
12. The Department Manual states that a corporal "performs responsible administrative and supervisory work in commanding an assigned shift of patrol officers. Performs all patrol and investigative procedures performed by police officers."
13. The Department itself is relatively small. The Chief of Police and to a lesser extent the Captain both play strong roles in daily department operations and remain informed about and involved with the lower ranking officers. This was demonstrated by evidence about department operations in general, including matters such as the Chief's responsibility for the more severe forms of discipline, an activity the Chief could not carry out without a fairly intimate knowledge of the officers in the

department, and the fact that Sergeant Martin felt it necessary to consult with the Captain before proceeding with the oral reprimands documented in Town Exhibits 1-3.

DECISION AND ORDER

Jurisdiction

The PELRB has jurisdiction over certification and modification petitions involving public employers, public employees, and employee organizations pursuant to the general provisions of RSA 273-A and the specific provisions of Pub 301.01.

Discussion

In general, the PELRB "should take into consideration the principle of community of interest" when determining the appropriate bargaining unit. RSA 273-A:8, I. Some criteria relevant to the community of interest include whether employees have the same conditions of employment, have a history of workable and acceptable collective negotiations, are in the same historic craft of profession, and function in the same organizational unit. RSA 273-A:8, I (a-d). Additionally, per Pub 302.02, the PELRB is also required to consider a common geographic location of the proposed unit as well as the presence of common work rules, personnel practices, salary and fringe benefit structures, and the self-felt community of interest of employees as further evidence of a community of interest.

The Town does not dispute that a community of interest exists between the positions in the proposed unit, and I specifically find that a community of interest exists based upon the evidence submitted at hearing and the criteria set forth in RSA 273-A:8, I and Pub 302.02. The Town's objections at this stage in the proceeding are based upon the alleged supervisory status of sergeants and corporals and NEPBA's treatment of School Resource Officer, Detective, and Police Prosecutor in the proposed bargaining unit.

RSA 273-A:8, II provides that "[p]ersons exercising supervisory authority involving the significant exercise of discretion may not belong to the same bargaining unit as the employees they supervise." The PELRB has "broad subject matter jurisdiction to determine and certify bargaining units to enforce the provisions of that chapter (RSA 273-A)." *Appeal of SAU #21*, 126 N.H. 95, 97 (1985). Analysis of the supervisory status issue is guided in part by the standard articulated in *Appeal of East Derry Fire Precinct*, 137 NH 607, 611 (1993), which provides that "[a] supervisory relationship exists when the supervisor is genuinely vested with significant supervisory authority that may be exerted or withheld depending on his or her discretion." Important factors to consider include an "employee's authority to evaluate other employees, the employee's supervisory role, and the employee's disciplinary authority." *Appeal of Town of Stratham*, 144 N.H. 429, 432 (1999) (citing *Appeal of East Derry Fire Precinct*, 137 N.H. at 610 (1993)). "[S]ome employees performing supervisory functions in accordance with professional norms will not be vested with the 'supervisory authority involving the significant exercise of discretion' described by RSA 273-A:8, II." *Appeal of East Derry Fire Precinct*, 137 N.H. at 611.

Supervisory employees are generally separated from rank and file employees because there is "a strong potential for a conflict of interest to arise between the two groups." *Appeal of Univ. System of New Hampshire*, 131 N.H. 368, 376 (1988). Such conflicts between the two groups may arise "because of the differing duties and relationships which characterize each group." *Appeal of East Derry Fire Precinct* at 610. It is therefore proper to examine the degree of significance of the exercise of discretion as well as the propensity to create conflict within the bargaining unit because of the differing duties and relationships. See *Londonderry Executive Employee Association v. Town of Londonderry*, PELRB Decision No. 2001-118.

In the present case there is evidence that sergeants are involved to some degree in discipline, evaluations, and hiring. The fact that sergeants have some authority in these areas is the start, and not the end, of the analysis because positions possessing some authority in these areas are not *per se* supervisors within the meaning of the statute. A proper assessment of the supervisory issue in this case requires consideration of matters such as the nature, extent, character and quality of sergeant's authority and involvement in the areas of discipline, evaluations, and hiring.

A sergeant's disciplinary authority in this department is limited to the issuance of verbal warnings, known as an oral reprimand under Union Exhibit One, §111 at 3-4. An oral reprimand is the mildest form of discipline contemplated in the Department Manual. The sergeant's disciplinary authority does not extend to issuing discipline in the form of written reprimand, demotion or suspension without pay, or dismissal, all of which are the more progressively severe forms of discipline outlined in the Department Manual. According to the Department Manual, only the Chief of Police can implement these more severe forms of discipline. Union Exhibit One, §111 at 5-8.

There is also evidence that sergeants complete written evaluations such as those represented by Town Exhibit 5 which are subject to review and signature by the Chief of Police and which are used in connection with the annual review of merit pay increases alluded to at the hearing. There was limited evidence as to the merit pay review process or the weight given to evaluations completed by sergeants' in that process. In the written evaluation process itself sergeants do not address whether or not an officer should receive a raise. The evaluations do not address or make any recommendation about the officer's employment status, i.e. the evaluations do not address matters such as the officer's suitability for promotion, demotion, suspension, or termination. There was no evidence that the purpose of the evaluations includes the hiring and/or termination of officers, a fact present and highlighted by the court in *Appeal of East Derry Fire Precinct*.

A sergeant's involvement in hiring is referenced in their job description, and it is manifested by their service on the Oral Interview Board, a part of the hiring process as described in Union Exhibit One, §109 at 4-5. According to this evidence, the Board conducting the interview generally includes the Captain, a Sergeant, and two additional department members. There was evidence at the hearing that patrol officers serve on the Oral Interview Board as well, a fact that somewhat diminishes the importance of a sergeant's involvement in this activity. There was little evidence or no evidence as to the actual operation and significance of the Oral Board Interview in the hiring process as the hiring process was not explained or reviewed in any

appreciable detail by witnesses during the course of the hearing.

In assessing the supervisory status of sergeants I also take into account the other evidence submitted. One example of such evidence is the fact that sergeants are not involved in internal affairs investigations. Another example is that sergeants act as the Officer In Charge. When acting as the Officer In Charge sergeants make decisions as to what gets done. However, senior patrol officers can also serve as the Officer In Charge. A third example of such evidence is the fact that the Chief of Police and the Captain appear to be fully aware of and engaged in the daily operations of the department to the extent that they minimize the discretion exercised by the lower ranking officers, including sergeants. The supervisory authority exercised by sergeants in the Tilton Police Department is relatively modest and limited, and is more in the nature of an employee performing some supervisory functions in accordance with professional norms, akin to a "working foreman." The degree of supervisory authority assigned to sergeants in the Tilton Police Department does not equate with a propensity to create conflict within the proposed bargaining unit because of differing duties and relationships.

The evidence is insufficient to establish that the sergeant's position is vested with the 'supervisory authority involving the significant exercise of discretion' described by RSA 273-A:8, II and accordingly the Town's request to exclude them from the proposed unit is denied. The analysis and reasoning applicable to sergeants is equally applicable to corporals. The evidence is also insufficient to establish that corporals are "[p]ersons exercising supervisory authority involving the significant exercise of discretion" in the Town's police department.

The remaining issue is whether NEPBA's listing and description of School Resource Officer, Police Prosecutor, or Detective positions in the proposed bargaining unit is proper. The Town contends that performing the responsibilities of School Resource Officer, Police Prosecutor, or Detective is simply performing duties in addition to those of a Uniformed Police Officer, Corporal, or Sergeant, as the case may be. The Town's contentions are inconsistent with the manner in which it has prepared §104 of the Department Manual, the subject of which is "Job Descriptions." The following individual headings are listed:

- I. Chief of Police
- II. Captain
- III. Sergeant
- IV. Corporal
- V. Uniformed Police Officer
- VI. Detective**
- VII. Police Prosecutor**
- VIII. School Resource / Community Relations Officer**
- IX. Police Dispatcher/Clerk
- X. Police Clerk
- XI. Part-time employees
- XII. Animal Control Officer

Union Exhibit One, §104 at 1-14 (emphasis added). Detective, Police Prosecutor, and School Resource Officer are also listed in the Department's organizational chart. Union Exhibit One,

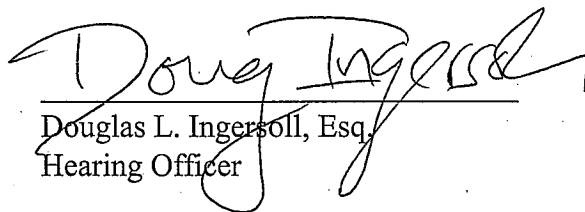
§103 at 3. The manner in which this information is organized strongly suggests that Detective, Police Prosecutor, and School Resource Officer should be treated as separate positions. This conclusion is reinforced by other evidence presented at the hearing. Such evidence established that officers performing these responsibilities do so on a full time basis for an indefinite period of time, with the exception of the School Resource Officer, who is assigned a normal shift during periods of school vacation and recess. Further, it is evident that the responsibilities presented under these job descriptions are unique and distinguishable from those listed under Sergeant, Corporal, or Uniformed Police Officer such that it is reasonable and logical to recognize them as separate positions. Apart from the disagreement as to whether School Resource Officer, Detective, or Police Prosecutor should be recognized as positions, the description of the proposed bargaining unit accurately reflects how the positions in the Department are currently configured.

Although in its initial answer to the petition the Town raised an exception based on the alleged confidential status of a clerical employee, the parties did not develop evidence on this issue at hearing nor did they brief the question. Accordingly, the issue is not addressed in this decision on that basis.

The petition for certification is granted. The bargaining unit shall consist of 18 positions: Dispatcher (1), Dispatcher-Clerk (1), Patrolman (4), Patrolman School Resource Officer (1), Part-time Patrolman (3), Detective (2), Part-time Detective (1), Detective Sergeant (1), Corporal (1), Sergeant-Police Prosecutor (1), and Sergeant (2). This matter shall proceed to election.

So Ordered.

July 2, 2007


Douglas L. Ingersoll, Esq.
Hearing Officer

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